

LEKAZ CONSTRUCTIONS SDN BHD

a

v.

KOP PETROLEUM SDN BHD; HSBC BANK MALAYSIA BHD
(INTERVENER)

b

HIGH COURT MALAYA, KUALA LUMPUR
JAMES FOONG J
[SUIT NO: S2-22-18-2002]
27 AUGUST 2003

CIVIL PROCEDURE: *Action - Disposal of action without trial - Application under O. 14A Rules of the High Court 1980 - Whether application flawed as it failed to refer to any question of law or construction of document for determination - Whether court empowered to dispose action only after determination of questions of law or construction of document*

c

This was the plaintiff's appeal against the decision of the Senior Assistant Registrar in allowing the defendant's application in encl. 24. Enclosure 24 was the defendant's application under O. 14A of the Rules of the High Court ('RHC') to dismiss the plaintiff's claim against the defendant.

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Held:

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[1] The primary purpose and objective of O. 14A RHC is not to provide a process to strike out pleadings or an action or defence. It is to provide for the determination of any question of law or construction of any document arising in any cause or matter in the proceedings without the full trial of the action and such determination will finally determine the entire cause or matter. The court is only empowered under O. 14A r. 1(2) RHC to dismiss the action after this process of determination is concluded. (p 379 e-g)

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[2] The contents in encl. 24 were no where close to what O. 14A intended. It was simply a request to strike out the plaintiff's claim based on O. 14A RHC. There was no question of law framed or a particular question on the construction of document forwarded to the court for consideration. To proceed directly and demand the striking out of the plaintiff's claim without any referral to any question of law or construction of any document was erroneous. (p 380 a-d)

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[Plaintiff's appeal allowed with costs; defendant's application in encl. 24 dismissed with costs.]

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a Legislation referred to:

Rules of the High Court 1980, O. 14A r. 1(1), (2)

For the defendant - Teng Kam Wah; M/s Teng Kam Wah & Co

For the plaintiff - Abu Bakar Jais; M/s Zaid Ibrahim & Co

b Reported by Usha Thiagarajah

JUDGMENT

James Foong J:

c Introduction

Enclosure 31 is an appeal by the plaintiff who is dissatisfied with the decision of the Senior Assistant Registrar in allowing the defendant's application in encl. 24.

d Enclosure 24 is an application of the defendant under O. 14A of the Rules of the High Court (RHC) to dismiss the plaintiff's claim.

Background

e The defendant has entered into an agreement with Esso Production Malaysia Inc in respect of certain engineering works to be carried out in Terengganu. Since the plaintiff agreed to finance this project, a written agreement (the said agreement) was entered into between the plaintiff and the defendant. Alleging the defendant had committed certain breaches in the said agreement, the plaintiff issued a letter (letter of demand) to the defendant demanding rectification of the alleged breaches within a period of seven days from date of the said letter.

f When the defendant refused to comply with this demand, the plaintiff issued a writ against him.

g Holding the view that this letter of demand is wrong in law since cl. 10.2 of the said agreement stipulates a '30 days notice' is required to be given by the plaintiff to the defendant to rectify any breach in the agreement instead of seven days as mentioned in the letter of demand, the defendant proceeded encl. 24.

Enclosure 24 is worded in the following manner:

... untuk perintah-perintah seperti berikut:

h (a) bahawa semua tuntutan Plaintiff seperti dalam pernyataan tuntutan yang bertarikh 7-1-2002 dibuang dengan kos berdasarkan Aturan 14A Kaedah 1, Kaedah-Kaedah Mahkamah Tinggi 1980;

(b) bahawa kos permohonan ini adalah kos dalam kausa;

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(c) relief lain yang mana Mahkamah yang Mulia ini berpendapat layak dan/atau suaimanfaat. a

The plaintiff objected to this application on the ground that it is defective on the basis that no question of law or construction of any document arising in this proceeding is either framed/posted to the court for determination. Further, the plaintiff argued that O. 14A RHC is not a process available to the defendant to strike out the plaintiff's claim. b

Analysis

Order 14A r. 1(1) RHC declares:

The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that: c

(a) such question is suitable for determination without the full trial of the action; and d

(b) such determination will finally determine the entire cause or matter or any claim or issue therein.

(2) Upon such determination the Court may dismiss the entire cause or matter or make such order or judgment as it thinks just. e

This court is of the opinion that the primary purpose and objective of this procedure under O. 14A RHC is not to provide a process to strike out pleadings or an action or defence. It is for determination of any question of law or construction of any document arising in any cause or matter at any stage of the proceedings before the court and of which such question is suitable for determination without the full trial of the action and such determination will finally determine the entire cause or matter. Only after this process of determination of the question of law or construction of document is concluded that, for completeness and final settlement of the entire case, the court is provided with powers under O. 14A r. 1(2) RHC to dismiss the entire cause or matter or make such order or judgment as it thinks just. f
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Thus the first requirement for the use of this process (O. 14A RHC) is to request the court to determine any question of law or the construction of any document arising in any cause or matter at any stage of the proceedings. Though no specific format is provided as a guide under the RHC but by logical deduction such question should be properly and precisely framed and presented h

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a to the court for determination. Otherwise, the court would not know exactly what is required to be decided.

Regrettably, the contents in encl. 24 are no where close to what O. 14A is intended. It is a request to strike out the plaintiff's claim based on O. 14A RHC. There is no question of law framed or a particular question on the construction of document forwarded to the court for consideration. The defendant is just obsessed with striking out the plaintiff's statement of claim that he viewed O. 14A RHC as a process to meet this end under the circumstances in this case. Perhaps his intention may be realised but before this could be achieved there must, initially, be a determination on question of law or construction of any document arising in the cause or matter. Only when this issue is settled any ancillary orders under O. 14 r. 9(2) RHC in respect of dismissing a cause or matter or whatever order the court thinks just can be awarded. To proceed directly, as in this case, to demand, striking out of the plaintiff's claim without any referral to question of law or construction of document arising in any cause or matter at any stage of the proceedings for determination by the court is erroneous, and ought to be struck out.

Conclusion

Accordingly, I hereby allow the appeal with cost. Consequently, encl. 24 is dismissed with cost.

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